



STATUTORY INSTRUMENTS.

S.I. No. 301 of 2011



DISTRICT COURT (HAGUE CONVENTION 1996) RULES 2011

(Prn. A11/1077)

S.I. No. 301 of 2011

DISTRICT COURT (HAGUE CONVENTION 1996) RULES 2011

The District Court Rules Committee, in exercise of the powers conferred on them by section 91 of the Courts of Justice Act 1924, section 72 of the Courts of Justice Act 1936, section 34 of the Courts (Supplemental Provisions) Act 1961 and section 24 of the Interpretation Act 2005, do hereby, with the concurrence of the Minister for Justice and Equality, make the following rules of court.

Dated this 4th day of April 2011.

Miriam Malone Chairperson

Mary C Devins

Thomas E O'Donnell

Brian Sheridan

David Riordan

Roy Pearson

Noel A Doherty

I concur in the making of the following rules of court.

Dated this 20th day of June 2011.

ALAN SHATTER,
Minister for Justice and Equality.

*Notice of the making of this Statutory Instrument was published in
"Iris Oifigiúil" of 24th June, 2011.*

S.I. No. 301 of 2011

DISTRICT COURT (HAGUE CONVENTION 1996) RULES 2011

1. (1) These Rules, which may be cited as the District Court (Hague Convention 1996) Rules 2011, shall come into operation on the 18th day of July 2011.

(2) These Rules shall be construed together with the District Court Rules 1997 (S.I. No. 93 of 1997) and all other District Court Rules.

(3) The District Court Rules as amended by these Rules may be cited as the District Court Rules 1997 to 2011.

2. The District Court Rules 1997 are amended:

(i) by the substitution for the title of Order 62 of the following title:

“Order 62

PROCEEDINGS UNDER

THE BRUSSELS CONVENTION OF THE EUROPEAN COMMUNITIES ON JURISDICTION AND THE ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS, 1968 OR

THE LUGANO CONVENTION ON JURISDICTION AND THE ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS BETWEEN MEMBER STATES OF THE EUROPEAN COMMUNITIES AND THE EUROPEAN FREE TRADE ASSOCIATION, 1988 OR

COUNCIL REGULATION (EC) NO. 44/2001 ON JURISDICTION AND THE RECOGNITION AND ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS OR

THE ROME CONVENTION BETWEEN THE MEMBER STATES OF THE EUROPEAN COMMUNITIES ON THE SIMPLIFICATION OF PROCEDURES FOR THE RECOVERY OF MAINTENANCE PAYMENTS OR

THE NEW YORK CONVENTION ON THE RECOVERY ABROAD OF MAINTENANCE OR

THE HAGUE CONVENTION ON JURISDICTION, APPLICABLE LAW, RECOGNITION, ENFORCEMENT AND CO-OPERATION IN RESPECT OF PARENTAL RESPONSIBILITY AND MEASURES FOR THE PROTECTION OF CHILDREN, 1996”,

and

- (ii) by the insertion immediately following rule 29 of Order 62 of the following title and rules:

“PART VII — PROCEEDINGS UNDER THE HAGUE
CONVENTION 1996

30. In this Part (rules 30 to 41 inclusive), unless the context otherwise requires:

“the Act of 2000” means the Protection of Children (Hague Convention) Act 2000 (No. 37 of 2000);

“the Clerk” means the Clerk for the Court area in which the original application was or is to be heard and decided or in which the original order was made;

each of the expressions “another contracting state”, “Central Authority”, “contracting state”, “the Convention”, “decision”, “judgment”, and “measure” has the meaning assigned to it by section 1 of the Act of 2000.

31. Subject to section 4(2) and section 4(3) of the Act of 2000, proceedings before the Court under the Act of 2000 or under the Convention by virtue of that Act may be brought, heard or determined:

- (a) in the case of proceedings to which section 4(1)(b) or section 4(1)(c) of the Act of 2000 applies, at any sitting of the Court for any court area in the court district determined in accordance with section 4(1)(b) or, as the case may be, section 4(1)(c) of the Act of 2000;
- (b) in the case of any other proceedings under the Act of 2000 or under the Convention by virtue of that Act, at such sitting of the Court or otherwise as is prescribed by these Rules or by statute for proceedings seeking the relief concerned.

32. (1) Where the Court has jurisdiction in any proceedings to which the Convention applies, under Article 5 or 6 of the Convention but, on application of a party to the proceedings or of its own motion, considers in accordance with Article 8 of the Convention that the authority of another contracting state would be better placed in the particular case to assess the best interests of the child, the Court may stay the proceedings before it for a period specified by the Court and, as the Court considers appropriate, either:

- (a) direct the Central Authority to make a request on its behalf to the proper authority of the other contracting

state concerned to assume jurisdiction to take such measures of protection as it considers necessary in accordance with Article 8 of the Convention, or

- (b) invite the parties to introduce such a request before the proper authority of the other contracting state concerned in accordance with Article 8 of the Convention

and the Court may, for those purposes, limit the period of any stay to a period specified by the Court, and adjourn the matter for further consideration.

(2) The Court may discharge a stay ordered in accordance with sub-rule (1) and direct the withdrawal of any request made under paragraph (a) of that sub-rule if the authority in the other contracting state concerned does not assume jurisdiction within the period for which the Court granted the stay.

(3) The Court may discharge a stay ordered in accordance with sub-rule (1) if the parties do not, within the period specified by the court, request the authority in the other contracting state concerned to assume jurisdiction.

33. Where the Court is asked in accordance with the Convention to exercise a jurisdiction conferred on it to take any measures by virtue of being the appropriate court of a contracting state, the document commencing the appropriate proceedings in accordance with these Rules:

- (i) shall additionally be entitled in the matter of the provision of the Convention in accordance with which the Court is asked to exercise jurisdiction, and
- (ii) shall additionally have appended a copy of any relevant request in writing made by the competent authority of another contracting state, together with a certified translation, where necessary, into Irish or English, or
- (iii) shall otherwise set out the basis on which the request to exercise jurisdiction is made.

34. The Court may give such directions to the Central Authority as are appropriate to facilitate participation in any exchange of views referred to in Article 8.3 of the Convention or Article 9.2 of the Convention in such manner and by such means as the Judge considers most suitable to meet the purposes of the Convention.

35. (1) In any case where the Court has made an order under Article 11 of the Convention, the Court may direct the Central Authority to notify the Central Authority of another contracting state of the making of that order and may direct the first-mentioned Central Authority to make inquiries of the Central Authority of another contracting state as to whether measures referred to in paragraph 2 of Article 11 of the Convention have been taken and, if so, as to the content of those measures.

(2) In any case where the Court has been asked to make an order under Article 12 of the Convention, the Court may direct the Central Authority:

- (a) to make inquiries of the Central Authority of another contracting state as to whether any measures have been taken by the authorities having jurisdiction under Articles 5 to 10 of the Convention and, if so, as to the content of those measures;
- (b) to make inquiries of the Central Authority of another contracting state as to whether a decision (in respect of the measures of protection which may be required by the situation) referred to in paragraph 2 of Article 12 of the Convention has been taken and, if so, as to the content of that decision; or
- (c) to notify the Central Authority of another contracting state of the making by the Court of an order under Article 12 of the Convention.

(3) For the purpose of enabling the Court to record that measures taken in accordance with Article 11 of the Convention have lapsed, the moving party in any proceedings to which sub-rule (1) applies in which measures were taken by the Court in accordance with Article 11 of the Convention shall promptly notify the Clerk in writing as soon as the authorities which have jurisdiction under Articles 5 to 10 of the Convention have taken the measures required by the situation or, as the case may be, as soon as the measures required by the situation and taken by the authorities of another state are recognised by the contracting state in question.

(4) For the purpose of enabling the Court to record that measures taken in accordance with Article 12 of the Convention have lapsed, the moving party in any proceedings to which sub-rule (2) applies in which measures were taken by the Court in accordance with Article 12 of the Convention shall promptly notify the Clerk in writing as soon as the authorities which have jurisdiction under Articles 5 to 10 of the Convention have taken a decision in respect of the measures of protection which may

be required by the situation or, as the case may be, as soon as the measures required by the situation and taken by the authorities of another state are recognised by the contracting state in question.

(5) Where the moving party fails promptly to notify the Clerk in accordance with sub-rule (3) or sub-rule (4), the respondent or any other person sufficiently interested may make the necessary notification.

36. Without limiting any other power of the court, the Court may adjourn proceedings under the Act of 2000 for the purpose of making a request under Article 34 of the Convention.

37. (1) A request to the Court by an interested party (in accordance with section 3(2) of the Act of 2000) pursuant to Article 24 of the Convention to decide on the recognition or non-recognition of a measure taken in another contracting state and/or pursuant to Article 26 of the Convention that a measure be declared enforceable or registered for the purpose of enforcement in the State may at the election of the applicant, be made *ex parte* in the first instance subject to the prior lodgment with the Clerk of a notice in the Form 62.22 Schedule C, or otherwise shall be made on notice to the respondent by the issue and service on the respondent at least 4 days prior to the date fixed for the hearing of a notice in the Form 62.22 Schedule C.

(2) An application for such recognition and/or enforcement shall be grounded upon an affidavit which exhibits the judgment or decision (in this rule referred to as the “decision”) constituting or recording the measure concerned or a certified or otherwise duly authenticated copy thereof (together with a certified translation, where necessary, into Irish or English) and where necessary, states the name of the authority in the contracting state concerned and the date on which and place at which the measure was given or ordered, which explains concisely the nature and effect of the measure and which sets out or verifies (or which exhibits and verifies documents which set out):

- (a) the full name, address and date and place of birth (where available) of each child to whom the measure relates;
- (b) the full name, address and date and place of birth (where available) of each person who has, in relation to each such child, rights and/or obligations of a kind mentioned in Article 3 of the Convention;

- (c) where the request concerns the enforcement of a measure concerning access:
 - (i) the practical arrangements for exercise of rights of access (to the extent stated in the decision), including date and time, start, end and place;
 - (ii) any specific obligations on the holders of parental responsibility;
 - (iii) any specific obligations on the person with a right of access;
 - (iv) any restrictions attached to the exercise of rights of access;
- (d) the jurisdiction of the authority concerned to take the measure by reference to Chapter II of the Convention and, where relevant, any findings of fact on which the authority of the contracting state where the measure was taken based its jurisdiction;
- (e) whether the child concerned was given the opportunity to be heard, or where relevant, that the measure was taken in a case of urgency;
- (f) whether any person having parental responsibility in respect of the child concerned was given the opportunity to be heard, or where relevant, that the measure was taken in a case of urgency;
- (g) where relevant, whether any later measure has been taken in a non-contracting state of the habitual residence of the child;
- (h) where relevant, that the procedure provided in Article 33 of the Convention has been complied with;
- (i) documents which establish that, according to the law of the contracting state in which it has been given, the measure is enforceable;
- (j) where applicable, the grounds on which the right to request recognition or non-recognition or that a measure be declared enforceable or registered for the purpose of enforcement is vested in the party making the application.

38. Where the party applying under rule 37 does not produce the evidence or documents referred to in rule 37, the Court may:

- (a) adjourn the application to allow the applicant an opportunity to produce the said evidence or documents, or
- (b) accept equivalent evidence or documents, including by way of oral evidence, or
- (c) dispense with the production of such evidence or documents.

39. (1) The order of the Court granting a request to decide on the recognition of a measure taken in another contracting state and/or that a measure be declared enforceable or registered for the purpose of enforcement in the State shall be in the Form 62.23, Schedule C and shall, subject to sub-rule (2), be enforceable for all purposes in accordance with these Rules.

(2) The Court may direct the service by such means as it directs of the order on any person who it appears to the Court may be affected by the making of the order and may stay the operation of the order for a specified period.

(3) Any application consistent with the requirements of the Convention to set aside or discharge such an order shall, unless the Court otherwise directs, be preceded by the issue and service on the original applicant of a notice (or, as the case may be, on every person on whom the Court's order has been served) in the Form 62.24, Schedule C, and the original notice shall, unless the Court otherwise allows, be lodged with the Clerk at least two days before the date fixed for the hearing of the application.

(4) An application under sub-rule (3) shall, unless the Court otherwise permits, be brought:

- (a) by a person served with the order in the State, within one month of such service, or
- (b) by a person served with the order in another contracting state, within two months of such service.

(5) The Court shall have power to stay the enforcement of the order, on such terms as it sees fit, where such an application is made.

(6) It shall be the responsibility of the original applicant to apply promptly to the Court to set aside or discharge an order made in accordance with rule 37 where the measure concerned (in this rule referred to as the "measure concerned") has been set aside or discharged by the authority in the contracting state concerned, or another measure inconsistent with the measure concerned or otherwise affecting the measure concerned taken

by the authority of a contracting state having jurisdiction to do so. In such a case, the application to the Court shall be grounded on an affidavit:

- (a) which exhibits the judgment or decision setting aside or discharging the measure concerned or, as the case may be, the judgment or decision taking another measure inconsistent with the measure concerned or otherwise affecting the measure concerned, or a certified or otherwise duly authenticated copy of that judgment or decision, together with a certified translation, where necessary, into Irish or English, and
- (b) which states, where necessary, the name of the authority in the contracting state concerned and the date on which and place at which the judgment or decision was given or ordered, and which explains concisely the nature and effect of the judgment or decision.

(7) It shall be the responsibility of the original applicant to apply promptly to the Court to set aside or discharge, as appropriate, an order made in accordance with sub-rule (1) where the measure concerned has been varied by the authority in the contracting state concerned. Any interested party may make a further request to the Court in relation to the variation in accordance with section 3(2) of the Act of 2000 and rule 37.

(8) Where the original applicant fails to apply promptly to the Court in a case to which sub-rule (6) or sub-rule (7) applies, the original respondent or any other person sufficiently interested may make the necessary application to the Court.

(9) An application to which sub-rule (3) or (6) applies shall be heard and decided on affidavit, but the Court may receive oral evidence of any matter to which the application relates, as it considers necessary.

40. (1) A certificate of the Court for the purposes of section 6 of the Act of 2000 shall be provided on application in writing to the Clerk for that purpose and shall be in the Form 62.25 Schedule C. Where appropriate, certified copies of any relevant order of the Court in the proceedings and of any document lodged as proof of service in the proceedings may be appended to the certificate.

(2) Where the applicant (or an authority of another contracting state) requests further particulars of the proceedings to which the certificate relates, the Clerk, having consulted with the Judge, and subject to Article 37 of the Convention, may certify such further particulars.

41. The provisions of Order 58, rules 3 and 10 to 13 inclusive, shall apply *mutatis mutandis* to proceedings under the Act of 2000 and reference to “the Act” in those rules shall be read, for these purposes, as a reference to the Act of 2000.”

3. The Forms numbered 62.22 to 62.25 inclusive in the Schedule shall be added to the Forms in Schedule C to the District Court Rules 1997, immediately following Form 62.21.

SCHEDULE

No. 62.22

Protection of Children (Hague Convention) Act 2000

Convention on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children, signed at the Hague on the 19th day of October 1996, Article 24
*Article 26

Notice Of Application

pursuant to Article 24 of the said Convention to decide on the *recognition
*non-recognition of a measure taken in another contracting state

*pursuant to Article 26 of the Convention that a measure taken in another contracting state be declared enforceable or registered for the purpose of enforcement in the State

District Court Area of

District No.

..... Applicant
..... of (in the said District Court District) Respondent*

WHEREAS a measure (within the meaning of the said Convention) was on the day of 20 taken by, an authority of the contracting state (the “Contracting State Authority”) of....., a contracting state of the said Convention.

1. The said measure taken by the Contracting State Authority relates to the following child*(ren):

†Full name

Address

Date and place of birth (where available)

2. Summary of nature and effect of measure

3. The person*(s) having rights referred to in Article 3 of the Convention in respect of the child*(ren) and the nature of those rights are the following:

†Full name

Address

Date and place of birth (where available)

Nature of rights (e.g. parental responsibility, right of custody, right of access, guardianship)

Child*(ren) to whom those rights relate

4. Where the request concerns the enforcement of a measure taken by the Contracting State Authority concerning access:

(i) practical arrangements for exercise of rights of access (to the extent stated in the measure),
Date and time

Start

End

Place

(ii) any specific obligations on the holders of parental responsibility

(iii) any specific obligations on the person with a right of access.....

(iv) any restrictions attached to the exercise of rights of access

5. Jurisdiction of the Contracting State Authority to take the measure concerned by reference to Chapter II of the Convention
.....

6. Findings of fact on which the Contracting State Authority based its jurisdiction
.....

7. *The child*(ren) concerned was/were given the opportunity to be heard by the Contracting State Authority.

The measure was taken in a case of urgency and the child(ren) concerned was/were not given the opportunity to be heard by the Contracting State Authority.

8. *The following persons, having parental responsibility in respect of the child*(ren) concerned, namely,, *was/*were given the opportunity to be heard in relation to the measure by the Contracting State Authority.

The measure was taken in a case of urgency and the persons having parental responsibility in respect of the child(ren) concerned *was/*were not given the opportunity to be heard by the Contracting State Authority.

*9. A later measure has/has not been taken in a non-contracting state of the habitual residence of the child.

*10. The procedure provided in Article 33 of the Convention has been complied with.

11. According to the law of the Contracting State Authority, the measure is enforceable.

*12. The above-named applicant is entitled to request *recognition/*non-recognition of the measure *and that the measure be declared enforceable or registered for the purpose of enforcement in the State because

TAKE NOTICE that the above-named applicant will apply, to the District Court sitting at on the day of 20..... at a.m./p.m.:

*to decide on the recognition of the said measure taken by the Contracting State Authority pursuant to Article 24 of the said Convention

*to decide on the non-recognition of the said measure taken by the Contracting State Authority pursuant to Article 24 of the said Convention

*to declare the said measure enforceable in the State pursuant to Article 26 of the said Convention and/or that the said measure be registered for the purpose of enforcement in the State.

Dated this day of 20.....

Signed.....
(for) Applicant

To: District Court Clerk at

*To:
of:
(Respondent above-named)

*delete where inapplicable
†repeat as necessary for each further child or person concerned

Protection of Children (Hague Convention) Act 2000

Convention on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children, signed at the Hague on the 19th day of October 1996, Article 24
*Article 26

ORDER

District Court Area of

District No.

..... Applicant

..... of (in the said District Court District) Respondent*

WHEREAS UPON APPLICATION made to this Court on this date by the above-named applicant under Article 24 of the above-named Convention to decide on the *recognition *non-recognition of a measure taken in another contracting state

AND UPON reading the notice of application and the affidavit of sworn on the day of 20..... and the measure taken by a Contracting State Authority namely, of *(and certified translation thereof) *(and other documents) exhibited to said affidavit and having regard to the provisions of Article 23.2 of the said Convention

*AND UPON hearing said applicant *and said respondent

THE COURT decides that the said measure a copy *(and certified translation thereof) of which is annexed to this order *be recognised *not be recognised in the State

*AND UPON APPLICATION made to this Court on this date by the said applicant under Article 26 of the said Convention that the measure be declared enforceable or registered for the purpose of enforcement in the State

*AND UPON reading said notice of application and affidavit

*AND UPON hearing said applicant *and said respondent and having regard to the provisions of Article 23.2 of the said Convention

*THE COURT declares the said measure enforceable in the State and HEREBY ORDERS as follows:

[insert the appropriate provisions of the form of order as to access etc]

A copy of this order to be served on of

Dated this..... day of 20.....

Signed.....
Judge of the District Court

*delete where inapplicable

A person served with this order may apply to the Court to set aside or discharge the order, but the measure taken in the other contracting state concerned must be recognised by the Court unless one of the circumstances set out in Article 23.2 of the Convention applies.

Protection of Children (Hague Convention) Act 2000

Convention on jurisdiction, applicable law, recognition, enforcement and co-
operation in respect of parental responsibility and measures for the protection
of children, signed at the Hague on the 19th day of October 1996, Article 24
*Article 26

NOTICE OF APPLICATION TO *SET ASIDE *DISCHARGE ORDER

District Court Area of

District No.

..... Applicant

..... of (in the said District Court District) Respondent*

WHEREAS an order was made by the District Court sitting at.....
on the day of 20.....

deciding that a measure (within the meaning of the above-named Convention)
taken by an authority in the contracting State of and a copy
*(and certified translation thereof) of which is annexed to this notice of appli-
cation *be recognised *not be recognised in the State

*declaring the said measure enforceable in the State

TAKE NOTICE that the above-named *applicant *respondent of
..... will apply at the sitting of the District Court to be held
at on the day of 20..... at a.m./p.m.
to have the said order

*SET ASIDE *DISCHARGED on the following grounds—

.....
.....

Dated this day of 20.....

Signed.....
*(Solicitor for)*Applicant/*Respondent

To: District Court Clerk at.....

To..... *Applicant/*Respondent

of.....

*delete where inapplicable

ÉIRE

Protection of Children (Hague Convention) Act 2000, section 6

Convention on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children, signed at the Hague on the 19th day of October 1996

District Court Area of

District No.

[Title as in proceedings before the Court]

CERTIFICATE

I,..... of....., District Court Clerk for the above-named District Court Area, do hereby certify, as regards a measure taken by a Court in Ireland, namely the order of the District Court sitting at on the day of 20..... in the above-named proceedings, in accordance with section 6 of the above-named Act as follows:—

(i) the nature of the above-named proceedings is

(ii) the Court assumed jurisdiction under Article of the above-named Convention

(iii) the time for lodging an appeal against the measure *will expire on/*expired on the day of 20.....

(iv) *notice of appeal against the measure, *notice to set aside the measure, the measure having been given in default of appearance, *has been entered by *has not been entered

(v) the measure *was *was not taken in a case of urgency

(vi) the measure not being taken in a case of urgency, the Court has taken such account of the wishes of the child concerned as it thought appropriate and practicable having regard to the child’s age and understanding

*Copies of the following documents relative to these proceedings, which I have certified as true copies are appended to this certificate:

*Order of the District Court dated the day of 20.....

*Statutory declaration of service of dated the day of 20.....

establishing that notice of the institution of the proceedings was served on the respondent

Dated this day of 20.....

Signed.....
District Court Clerk

*delete where inapplicable

EXPLANATORY NOTE

(This does not form part of the instrument and does not purport to be a legal interpretation.)

These rules amend Order 62 to prescribe the procedure in respect of proceedings under the Protection of Children (Hague Convention) Act 2000 and the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in respect of Parental Responsibility and Measures for the Protection of Children, 1996.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,
TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
nó tríd an bpost ó
FOILSEACHÁIN RIALTAIS, AN RANNÓG POST-TRÁCHTA,
AONAD 20 PÁIRC MIONDÍOLA COIS LOCHA, CLÁR CHLAINNE MHUIRIS,
CONTAE MHAIGH EO,
(Teil: 01 - 6476834 nó 1890 213434; Fax: 094 - 9378964 nó 01 - 6476843)
nó trí aon díoltóir leabhar.

DUBLIN
PUBLISHED BY THE STATIONERY OFFICE
To be purchased directly from the
GOVERNMENT PUBLICATIONS SALE OFFICE
SUN ALLIANCE HOUSE, MOLESWORTH STREET, DUBLIN 2,
or by mail order from
GOVERNMENT PUBLICATIONS, POSTAL TRADE SECTION,
UNIT 20 LAKESIDE RETAIL PARK, CLAREMORRIS, CO. MAYO,
(Tel: 01 - 6476834 or 1890 213434; Fax: 094 - 9378964 or 01 - 6476843)
or through any bookseller.

€4.06

